UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

FILED

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CLERK. US DISTRICT COURT
NORFOLK. VA
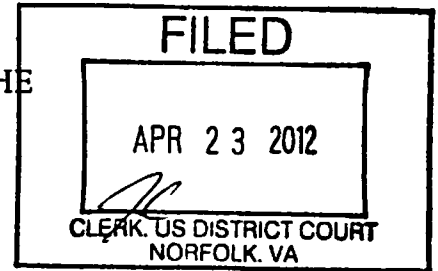
UNITED STATES OF AMERICA, Petitioner, v. KENNETH L. NELSON, and WANDA B. NELSON, Respondents.	)))))))))))))

Case No.: 2: 12cv218

PETITION FOR JUDICIAL APPROVAL
OF LEVY UPON A PRINCIPAL RESIDENCE

The United States of America petitions the Court for an order approving an

administrative levy by the Internal Revenue Service upon the principal residence of

Kenneth and Wanda Nelson, which is 1500 Chessington Court, Virginia Beach, Virginia

("Real Property"). In support of this petition, the United States submits the

accompanying declaration of Revenue Officer James Hill and avers the following:

1.   This proceeding is brought, and the Court's jurisdiction arises, pursuant to

28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 6334(e)(1) and 7402(a).

2.   Pursuant to 26 U.S.C. § 6331(a), the United States is authorized to levy

upon all property or rights to property of a taxpayer in order to collect an unpaid tax

liability. Under 26 U.S.C. §§ 6334(a)(13) and 6334(e)(1), property used as a principal

residence of the taxpayer is exempt from a levy to collect more than $5,000, unless such

levy is approved, in writing, by a United States District Court Judge or Magistrate Judge. *See* 26 U.S.C. §§ 6334(a)(13)(B), (e)(1); 26 C.F.R. § 301.6334-1(d).

3.   To obtain such judicial approval of levy upon a principal residence from the Court, the United States must demonstrate that:

a.   the underlying liability has not been satisfied;

b.   the requirements of any applicable law or administrative procedure relevant to the levy have been met; and,

c.   no reasonable alternative for the collection of the taxpayer's debts exists.

26 C.F.R. § 301.6334-1(d)(1); *In re Lawrence*, 2004 U.S. Dist. LEXIS 22228, *4 (D. Ariz. Sept. 29, 2004).

4.   By this petition, the United States seeks approval for the Internal Revenue Service to levy upon the Real Property. The Real Property is the principal residence of Kenneth and Wanda Nelson. A copy of the deed, including a legal description of the property, is attached to the Declaration of Officer James Hill as Exhibit 105.

5.   The United States is levying on the Real Property to collect Kenneth and Wanda Nelson's unpaid federal tax liabilities. As of January 9, 2012, Kenneth Nelson owes $73,571 in federal tax liabilities; Wanda Nelson owes $52,991; and the two jointly owe $7,665. (Hill Decl. ¶¶ 2-4.)

6.   The Internal Revenue Service has followed the requirements of applicable law and administrative procedures relevant to the requested levy.

7.   The Internal Revenue Service has concluded that Kenneth and Wanda Nelson have no assets of consequence other than the Real Property. Accordingly, there is no other reasonable collection alternative than levying on the Real Property.

WHEREFORE, the United States prays that:

A.   The Court enter an order to show cause; and

B.   If no written objection to this petition is filed with the Clerk of the Court within 21 days from the date of service of the order to show cause, the Court enter the proposed order being filed with this Petition, approving the levy on the Real Property; and

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C.   If a written objection to the petition is filed with the Clerk of the Court, that
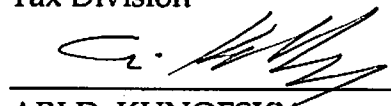
the Court set a hearing date for this matter.

Date: April 23 2012

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